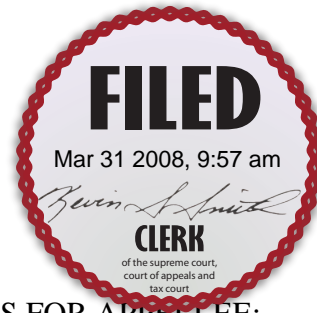


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

JOSH GRIFFITH,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A02-0707-CR-631

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Heather Welch, Judge
The Honorable Stanley Kroh, Commissioner
Cause No. 49F09-0604-FD-075906

March 31, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Josh Griffith (“Griffith”) was convicted in Marion Superior Court of Class D felony criminal recklessness and pleaded guilty to being an habitual offender. Griffith appeals and argues that the evidence was insufficient to support his conviction. We affirm.

Facts and Procedural History

On April 16, 2006, Richard Burchfield’s (“Burchfield”) son was fishing with a friend on the White River. The two boys were robbed of their fishing poles and bicycles, and Burchfield’s son was punched in the mouth. The boys contacted Burchfield and told him what had happened. Burchfield decided to drive around the area to look for the boys’ fishing poles and bicycles.

Burchfield eventually discovered the bicycles outside of Griffith’s house. As Burchfield approached the house, he also saw the fishing poles on the front porch. He then started yelling for the person who hit his son to come out of the house. Dale Mundy (“Mundy”) and Griffith came out onto the front porch, and Mundy and Burchfield began yelling at each other. Mundy turned to Griffith, who was standing in the doorway, and told Griffith to shoot Burchfield. Burchfield saw Griffith point a revolver at him and pull the trigger. Griffith moved back behind the door, and Burchfield heard a gunshot. Burchfield ran to his vehicle and drove away from the house while Mundy threw bricks at his car. Burchfield heard three more gunshots as he drove away.

On April 27, 2006, Griffith was charged with Class D felony criminal recklessness.¹ He was also charged with being an habitual offender. A jury trial

¹ Mundy was charged with Class B felony robbery, Class C felony robbery, and Class D felony criminal recklessness.

commenced on May 2, 2007, and Griffith was found guilty of Class D felony criminal recklessness. He pleaded guilty to being an habitual offender. He was ordered to serve 545 days and his sentence was enhanced by 545 days for the habitual offender adjudication. Griffith now appeals. Additional facts will be provided as necessary.

Discussion and Decision

When we review a claim of sufficiency of the evidence, we do not reweigh the evidence or judge the credibility of the witnesses. Jones v. State, 783 N.E.2d 1132, 1139 (Ind. 2003). We look only to the probative evidence supporting the judgment and the reasonable inferences therein to determine whether a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. Id. If there is substantial evidence of probative value to support the conviction, it will not be set aside. Id.

To establish that Griffith committed criminal recklessness, the State was required to prove that Griffith recklessly, knowingly, or intentionally performed an act that created a substantial risk of bodily injury to Burchfield while armed with a deadly weapon. See Ind. Code § 35-42-2-2 (2004 & Supp. 2007).

Relying on his own testimony at trial, Griffith argues that the evidence is insufficient to support his conviction because he merely pointed a starter pistol at Burchfield. Specifically, he asserts, “[a]ll Mr. Griffith tried to do was scare a loud obstreperous antagonistic threatening unannounced trespasser [] off of his porch and property with a starter pistol.” Br. of Appellant at 5.

Yet, Griffith does not acknowledge Burchfield’s testimony that the gun Griffith was holding appeared to be an old small caliber revolver. Tr. p. 36. Burchfield also

testified, “I seen the bullet itself inside the revolver” and described the gun to the jury. Id. Burchfield indicated that he was familiar with guns. Id. Therefore, it was reasonable for the jury to conclude that Griffith was armed with a revolver, not a starter pistol. Griffith’s argument is merely an invitation to reweigh the evidence and credibility of the witnesses, which our court will not do.

The State presented evidence that Griffith pointed a revolver at Burchfield and pulled the trigger. Burchfield heard several gunshots. This evidence is sufficient to support Griffith’s Class D felony criminal recklessness conviction.

Affirmed.

FRIEDLANDER, J., and ROBB, J., concur.